



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2021-0451; FRL-9166-02-R5]**

**Air Plan Approval; Michigan; Finding of Failure to Attain the  
2010 Sulfur Dioxide Primary National Ambient Air Quality  
Standard for the Detroit Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that the Detroit sulfur dioxide (SO<sub>2</sub>) nonattainment area failed to attain the 2010 primary 1-hour SO<sub>2</sub> national ambient air quality standard (NAAQS or "standard") by the applicable attainment date of October 4, 2018. This determination is based upon air quality modeling using actual and allowable emissions. This action requires the State of Michigan to submit one year after date of publication in the *Federal Register* a revision to its State Implementation Plan (SIP) that, among other elements, provides for expeditious attainment of the 2010 SO<sub>2</sub> standard. EPA is not finalizing the finding of failure to attain for the Rhinelander, Wisconsin area that was included in the notice of proposed rulemaking (NPRM), as a finding of failure to attain only applies to nonattainment areas and EPA expects to redesignate the area to attainment before the effective date of this action.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2021-0451. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Abigail Teener, Environmental Engineer, at (312) 353-7314 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-7314, *teener.abigail@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background Information.**

On October 27, 2021 (86 FR 59327), EPA proposed to determine that the Detroit SO<sub>2</sub> nonattainment area failed to attain the 2010 primary 1-hour SO<sub>2</sub> national ambient air quality standard NAAQS by the applicable attainment date of October 4, 2018. The background for this action is discussed in detail in the NPRM. EPA is not finalizing the finding of failure to attain for the Rhinelander, Wisconsin, area that was included in the NPRM, as a finding of failure to attain only applies to nonattainment areas and EPA expects to redesignate the area to attainment before the effective date of this action.

The determination of failure to attain for the Detroit area was based on air quality dispersion modeling, using actual and allowable emissions from the most recent three complete calendar years, prior to the attainment date of October 4, 2018. The NPRM describes EPA's modeling requirements to support attainment demonstrations as well as various features of the model that EPA used to make its determination of failure to attain. For an area to attain the 2010 SO<sub>2</sub> NAAQS by the October 4, 2018, attainment date, the design value based upon modeled actual and allowable air quality data from 2015-2017 at the area of maximum ambient SO<sub>2</sub> concentration must be equal to or less than 75 parts per billion (ppb) for the 1-hour standard. EPA's modeling analysis indicates that the highest predicted 3-year average 99th percentile 1-hour average concentration within the chosen modeling domain is 139 ppb. Therefore, based on modeled actual and allowable emissions for the 2015-2017 period, EPA is

determining that the Detroit area failed to attain the 2010 1-hour SO<sub>2</sub> standard by the October 4, 2018, attainment date.

Under Clean Air Act (CAA) section 179(d), a finding of failure to attain requires a state to submit, no later than one year after the publication date of the final action, a SIP revision for the area meeting the requirements of CAA sections 110 and 172, the latter of which requires, among other elements, a demonstration of attainment within the time period specified in CAA sections 179(d)(3) and 172(a)(2). Therefore, this action requires Michigan to submit a SIP revision by January 30, 2023, per section 179(d). Regardless, as discussed in the NPRM, EPA's obligation to promulgate a Federal implementation plan (FIP) for the Detroit area remains in force, and EPA is actively working on a FIP.

## **II. Public Comments.**

The proposed action described above provided a public comment period that closed on November 26, 2021. EPA received no comments on the proposed finding of failure to attain for the Detroit area.

## **III. What Action is EPA Taking?**

EPA is determining under CAA section 179(c)(1) that the Detroit area failed to attain the 2010 1-hour SO<sub>2</sub> standard by the applicable attainment date of October 4, 2018. This action requires Michigan under CAA section 179(d) to submit a revision to the SIP for the Detroit SO<sub>2</sub> nonattainment area. The required SIP revision must, among other elements, demonstrate expeditious

attainment of the standards within the time period prescribed by CAA section 179(d). The SIP revision required under CAA section 179(d) is due for submittal to EPA no later January 30, 2023.

EPA is not finalizing the finding of failure to attain for the Rhinelander, Wisconsin area that was included in the NPRM, as a finding of failure to attain only applies to nonattainment areas and EPA expects to redesignate the area to attainment before the effective date of this action.

#### **IV. Statutory and Executive Order Reviews.**

Additional information about these statutes and Executive orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

##### *A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

##### *C. Regulatory Flexibility Act (RFA)*

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small

entities. This action requires the state to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate of \$100 million or more, as described in UMRA (2 U.S.C. 1531- 1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action determines that the Detroit SO<sub>2</sub> nonattainment area failed to attain the NAAQS by the applicable attainment date and triggers existing statutory timeframes for the State to submit SIP revisions. Such a determination in and of itself does not impose any Federal intergovernmental mandate.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. The finding of failure to attain the SO<sub>2</sub> NAAQS does not apply to tribal areas, and the action does not impose a burden on Indian reservation lands or other areas where

EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Detroit SO<sub>2</sub> nonattainment area. Thus, this action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because the effect of this action does not trigger additional planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income*

## *Populations*

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The effect of this action triggers additional planning requirements under the CAA.

### *K. Congressional Review Act (CRA)*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### *L. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a



petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: January 6, 2022.

Debra Shore,  
*Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for “Determination of failure to attain the 2010 SO<sub>2</sub> standard” immediately after the entry for “2010 Sulfur Dioxide Clean Data Determination” to read as follows:

**§ 52.1170 Identification of plan.**

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(e) \* \* \*

**EPA--APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * *	* * *	* * *	* * *	
Determination of failure to attain the 2010 SO <sub>2</sub> standard	Detroit area (Wayne County, part)		[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Triggers requirements of CAA section 179(d) for the State of Michigan to submit by January 30, 2023, a revision to its SIP for the Detroit area that, among other elements, provides for expeditious attainment of the 2010 SO <sub>2</sub> standard within the time period specified in CAA sections 179(d) (3) and 172(a) (2).
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